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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8333 OF 2007

Chatrapati Sahakari Sakhar
Karkhana Limited, ...Petitioner

v/s.

Mr. Vasant Namdev Jagtap & ors. ...Respondent

ALONGWITH
WRIT PETITION NO. 8334 OF 2007

Chatrapati Sahakari Sakhar
Karkhana Limited, ...Petitioner

V/s.

Mr. Santosh Ramdas Karkare & ors. ...Respondent

ALONGWITH
WRIT PETITION NO. 8335 OF 2007

Chatrapati Sahakari Sakhar
Karkhana Limited, ...Petitioner

v/s.

Mr. Kishor Jagganath Shinde & ors. ...Respondent

Mr.K.S.Bapat i/b S.D.Kulkarni for the Petitioners
Mr.P.M.Patel for the Respondents

CORAM : B.H.MARLAPALLE,J.
DATED : 20th November, 2007

P.C.

Heard Mr.Bapat, the learned counsel for the Petitioner sugar factory. These petitions have been filed by the same sugar factory and the grievance raised in these petitions is common in as much as the petitioner is aggrieved by an inter-locutory order passed on an application at exh.U-2 on 18-10-2007 in 3 different complaints of unfair labour practice filed by three employees.

2. Mr.Patel appears for the respondent employees who have filed the complaints of unfair labour practice i.e. comp(ULP) nos. 13 to 15 of 2007. Respondent no.2 be deleted forthwith.

3. It was the case of the Complainants that they were working as Lab-chemist from the sugar season of the year 2000-2001 onwards and they were in continuous service on a daily wage of Rs. 50/- which was initially Rs. 35/-. The Karkhana engaged more than 500 employees. They claimed that they were entitled for permanency and such a representation was filed by them on 20-1-2006. They also pointed out that they possessed the degree of B.Sc. and were, therefore, qualified to be absorbed in regular employment in view of their qualification as well as continuous service of more than 5 years. The complaint

was filed under items 5,6,9 and 10 of Schedule IV read with section 28(1) of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 ('the Act' for short). These complaints were moved on or about 10-1-2007 before the Industrial Court at Pune.

4. In the said complaints, the Complainants individually had also moved an application for interim relief under section 30(2) of the Act and prayed for directions not to change the nature of their duties, not to terminate their services and for payment of wages as prescribed under the Minimum Wages Act, 1948 and as applicable to the sugar factory. The Petitioner Karkhana filed a composite written statement and opposed the complaints. It denied that the Complainants were at any time in its employment and alleged that all the documents insupport of the complaint were forged. While contesting the application for interim relief the Karkhana contended that unless the main issue of employer-employee relationship is decided, the application filed for interim relief could not be heard and decided and in any case there was no prima-facie case made out for the relief prayed for in as much as there was no prima-facie case of unfair labour practice under any of items namely item nos. 5,6,9 and 10 of the Act.

5. The learned Member of the Industrial Court after hearing both the parties and on perusal of the documents placed on record held that a prima-facie case was made out for grant of interim relief and, therefore, proceeded to pass the impugned order. It would be relevant to re-produce the operative part of the impugned order as under:-

> "1) Application vide Exh.U-2 is partly allowed as under:
>
> 2) Without following due process of law, respondent shall not terminate the services of the Complainant, till final decision of this matter on merit."

6. It is, thus, clear that the relief prayed for by way of interim relief by the Complainants has not been allowed and all that has been done is to protect the present status of the Complainant and in any case the employer's right to terminate their service has not been taken away. The employer has been directed to follow the due process of law in case it desires to terminate the services of Complainants.

7. Mr. Bapat the learned counsel for the Petitioner karkhana submitted that the documents relied upon by the Industrial Court insupport of the impugned order are obviously vague documents and there was no prima-facie evidence on record to accept the employer-employee relationship and on these obtaining circumstances, it was not permissible for the Industrial Court to allow even partly the application at exh. U-2 filed under section 30(2) of the Act. Insupport of these arguments Mr.Patel placed reliance on the following decisions of this Court.

1) Municipal Corporation of City of Amravati v/s. Ashok Ramkrishna Kamble & ors. reported in 1994 II CLR page 180.

2) BSES Limited v/s. Bombay Electric Workers Union & ors. reported in 2004 III CLR page 470 and

3) ICICI Bank Ltd. v/s. Maharashtra Rajya Rashtriya Kamgar Sangh & anr. reported in 2005 I CLR page 909.

8. The Division Bench of this Court in the case of BSES Ltd. (supra) while dealing with the provisions of

section 30(2) of the Act made the following observations.

> "sub-section (2) thereof enables the Industrial Court and the Labour Courts as the case may be to pass such interim order as it deems just and proper pending final decision in the complaint. The interim order contemplated under sub-section (2) of Section 30 interalia is temporary relief to the Complainant or a restraint order or direction to the party having been engaged in unfair labour practices to withdraw temporarily the unfair labour practices complained of, which is an issue in the complaint. Grant of such interim order under sub-section(2) has to be founded on prima-facie consideration of the matter about the unfair labour practices having been engaged in by the party against whom the complaint is made. Sans prima facie finding of unfair labour practice having been engaged in by the party against whom the complaint is made, we are afraid, the interim order contemplated under sub-section (2) of Section 30 cannot be justified."

9. Section 30(2) of the Act to the extent it is relevant reads as under:

"In any proceeding under the Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the persons to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision."

10. The language of the said sub-section is very clear and the interim order in terms of directions to withdraw temporarily the practice complained of is one of the reliefs and not the sole relief. The Court has the powers to pass such interim order including any temporary relief or restraining order as it deems just and proper pending final decision.

11. Having regards to the averments made in the complaint filed before it, the relief to be granted under section 30(2) cannot be put in a straight jacket formula and it varies from case to case. In the instant case all the Complainants have prayed for an absolute protection not to terminate their services or not to change the nature of their duties and also for directions to pay them the rates of wages as prescribed under the Minimum Wages Act, 1948. Such reliefs have not been granted by the learned Member of the Industrial

Court. The operative part of the impugned order as reproduced hereinabove does not take away the right of the petitioner to terminate the services of the Complainants by following the due process of law and while giving such protection the learned Member relied upon 3 documents namely (a) the affidavits filed by the Complainants supporting each other (b) the attendance registers for the years 2002 and 2003 and (c) the Experience Certificate dated 18-5-2002. It was contended by Mr. Bapat that Experience Certificate dated 18-5-2002 is a forged document. This is an issue which will have to gone into by way of evidence and as of now admittedly no complaint with any police station has been filed against any of the Complainants on this account. In my considered opinion, the attendance registers from the year 2002 and 2003 as placed on record would be sufficient to support the impugned order and the learned Member of the Industrial Court was justified in directing the Petitioner Karkhana not to terminate the services of any of the Complainants without following the due process of law and this order in no way causes prejudice to the Petitioner. On the other hand, if such protection was not granted by the Industrial Court, chances are that the Complainants would be stopped entering into the factory premises and the complaints filed for the benefit of permanency would be rendered infructous. This aspect of irreperable loss

is a prime consideration insupport of the impugned order.

12. I am, therefore, satisfied that the impugned order cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution of India. Hence, the Petitions are rejected summarily.

[B.H.MARLAPALLE,J.]